SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 827

■

BETTY BENOIT, *Appellant*

v.

THE STATE OF MISSISSIPPI, *Appellee*

■

APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

APPELLANT'S BRIEF

[FREEDOM OF PRESS]

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Opinion Below

The opinion of the Supreme Court of Mississippi is reported in 194 Miss. ..., and in 11 So. 2d 689. It appears also in the record at pages 119 to 125.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of Mississippi was rendered and entered January 25, 1943. (R. 126) The petition for appeal and other papers required by the rules of this court are filed within three months from the date of such judgment. R. 127-140.

The Statute

The statute, the constitutionality and validity of which is drawn in question here, is Chapter 178 of the General Laws of Mississippi duly enacted at the regular session of the Mississippi Legislature. The statute as originally enacted (House Bill 689) reads as follows:

HOUSE BILL No. 689

AN ACT to secure peace and safety of the United States and state of Mississippi during war; to prohibit acts detrimental to public peace and safety, and to provide punishment for same.

WHEREAS, The imperial government of Japan and governments of Germany and Italy, and associated nations, have expressly declared war upon these United States, a union of which the state of Mississippi is a part; and

WHEREAS, The very life and existence of these United States and the state of Mississippi are threatened by the said foreign powers, and there is now existing an acute unquestionable emergency in these United States and the state of Mississippi; and

WHEREAS, The preservation of the state of Mississippi and these United States depends upon a unity of effort on the part of all the citizens thereof, public necessity requires that the legislative depart-

ment of the state of Mississippi and of these United States shall enact all laws and do all things necessary to insure domestic tranquility and promote the common defense and general welfare of the people thereof; and

WHEREAS, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the state of Mississippi are a menace to the safety of this State and these United States.

NOW, THEREFORE,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Sec. 2. Any person in possession of maps or parts

of maps having marked thereon any industrial, storage or manufacturing plant, power or gas plant, facilities for waterworks, sewerage or sewerage disposal, transportation terminals, shops or facilities, oil and gas pumping and storage station, or government or public buildings, which may be used for information to the enemy or to aid the enemy, without proper authority, shall be prima facie evidence of the intention of such persons to violate the law and, upon conviction of such possession, shall be punished by a fine not exceeding $1,000.00, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment.

Sec. 3. That any unnaturalized alien who is questioned on an alleged violation of the provisions of this act by a duly elected, acting and qualified law enforcement officer, and refuses to give information as his or her age, birthplace, parents, places of residence for the last five years; source, amount and extent of salary, compensation, livelihood, and means of travel, if any; marital status, or who answers falsely any such question, or refuses to submit to fingerprinting, or who defies or obstructs the law, or any officer of the law while he is performing his duties with relation to the provisions of this act shall be guilty of obstructing justice and shall be punished therefor as now provided by law.

Sec. 4. That this act is cumulative and does not repeal or interfere with any existing law, but is in addition thereto.

Sec. 5. Except as to cases then pending in court this act shall expire after the duration of the present war.

Sec. 6. If any word, line, section or part of this act should hereafter be declared unconstitutional by the

courts, such decision shall not be construed so as to render invalid the remainder of this act.

Sec. 7. That this act shall take effect and be in force from and after its passage.

Approved March 20, 1942.

The Circuit Court which is the trial court and the appellate court, the Supreme Court of Mississippi, held the statute was not unconstitutional and that it was not superseded by federal statutes on the same subject. Such courts refused to hold that the statute on its face and as construed and applied to the facts abridged the rights of freedom to worship Almighty God, freedom of conscience, of press and speech contrary to the 1st and 14th Amendments to the United States Constitution. Said courts also held that the statute was not vague, indefinite, too general and a dragnet as construed and applied.

The Indictment

THE STATE OF MISSISSIPPI, COUNTY OF MARION
CIRCUIT COURT, JUNE TERM 1942.

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of said county, elected, empaneled, sworn and charged to inquire in and for the county aforesaid, at the term aforesaid, of the court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present, that

MRS. VIOLET BABIN
AND
MISS BETTY BENOIT

in said county, on or about the .... day of June, 1942, acting together and in conjunction with each other, as in-

dividuals and as members of a certain organization or sect commonly known as Jehovah's Witnesses, did then and there wilfully, unlawfully, feloneously, knowingly and intentionally disseminate and distribute certain literature and printed matter designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America, to wit, a certain publication or journal, entitled "Consolation, a Journal of Fact, Hope and Courage", being Vol. XXIII No. 583 of said publication, dated January 21, 1942, published by Watchtower Bible and Tract Society, Inc., which said publication or journal was printed in the English language and contained an article under the caption "Public Opinion in Maine" in the following words, to wit:

"The Supreme Court decision supporting the legality of a Pennsylvania school board rule requiring children to salute the American flag would have been nearer right, nearer sound, if the Court had simply said that that is a matter of State jurisdiction.

"But see what a pitiful mockery of education that salute to the flag is!

"There is probably not one teacher in twenty,—not one teacher in twenty who can give you a comprehensive, adequate definition of what the flag stands for. What that flag salute amounts to is a contemptible, primitive worship. Those people who put such rules into the State law don't know what they are at work on.

"It is probable that not half a dozen members of any State Legislature can give an adequate definition of what the flag stands for.

"Can any legislator or any teacher give you a better definition of the flag than the emblem of American rights at sea and in foreign lands? That is, that the flag stands for what is precious to Americans outside of America.

"Try another definition. Perhaps this definition is not

so good now as it was ten years ago, but say down to ten years ago, the stars and stripes stood for the Supreme Court of the United States.

"As a matter of history it is not too far to say that the Supreme Court of the United States has been the great defender of the American citizen's individual liberty and initiative, of his rights of property, of his right to protection of the laws.

"But the fundamental of that saluting the flag religion is its utter contradiction of good education. What it amounts to is a required worship, worship by the children that don't know what they are worshiping. They never will learn by that kind of tyranny.

"See how much more patriotic it would be if our teachers were given the proper opportunity to help their children to understand the government under which they live. Help them to understand the great principles of the law of the land, the great principles of the common law that the fathers brought over with them when they came from England.

"To help the children to understand what is the law of the land, what are the rights of an American citizen, to understand what police protection they are entitled to, to understand how their rights can be vindicated in the courts. And especially to understand the function of the court, what the court does for the citizen.

"To help the children to understand the duties of government; and how those duties are divided to the city, the State Government, the Federal Government.

"It is good that the Supreme Court of the United States is not going over the country to tell the States that they can do about the flag.—Lewiston Daily Sun."

and which said publication or journal also contained an article under the caption "French Catholics Start Flag Salute", in the following words, to wit:

"A dispatch from Monte Carlo says, 'The salute to the flag ceremony, now a daily event in all French schools, originated in the Catholic schools of France.' The type of mind that finds satisfaction in worshipping images would also be most inclined toward emblem worship of various kinds. The item confirms the claim that flag saluting in the United States has covertly been pushed by the Catholic Hierarchy here."

and which said publication or journal also contained other articles of similar nature, import and purpose, all of which were then and there designed and calculated and which reasonably tends to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States, in violation of the statutes in such case made and provided and against the peace and dignity of the State of Mississippi.

BERNARD CALLENDER
County Prosecuting Attorney

Statement

Appellant came to Columbia, Mississippi, with her companion, Mrs. Violet Babin, on April 7, 1942, for the purpose of preaching the gospel of God's kingdom to the people of that community. (R. 76, 90) As ministers sent forth by the Watchtower Bible and Tract Society of Brooklyn, New York, they carried on their evangelistic work by calling from house to house and visiting the people in their homes, there presenting to them the various publications of this Society and encouraging those of good-will to read and study same. (R. 93, 96) This was the same work that appellant and her companion had carried on in their native state of Louisiana for the two years just previous. R. 80.

Among the publications thus distributed by appellant,

was *Consolation—A Journal of Fact, Hope and Courage,* which is published every other Wednesday and distributed nation-wide, being entered in the mails as second-class matter under regulations prescribed by Congress. (R. 69, 93-94) This journal is published by the Watchtower Bible and Tract Society for the special benefit of Jehovah's witnesses, as well as for distribution among the general public. R. 55-67, 84.

The entire magazine was introduced in evidence and the original exhibit furnished this court. Examination of its contents shows it to be essentially a news magazine with editorial comment stressing the relationship of current world events to Bible prophecy. It seeks to untangle the maze of news that daily crowds the public press of the nation, and to present the more significant items to its readers in a clear, understandable manner. It does not feature war-news, but rather covers other matters of general public concern. Its columns are not subject to censorship. It carries no commercial advertising. Printed in twelve languages, its principal purpose is to enlighten and inform its readers on matters vital to their welfare. Its constant purpose is to get at facts and bring into public view everything that tends to obscure the important issues. Founded in 1919 as *The Golden Age,* more than six and one-half million copies were printed in 1942.

The magazine contains items of general interest, such as reprints and quotations from various newspapers and magazines both secular and religious (R. 43), historical treatises (R. 55-59), letters and reports from Jehovah's witnesses (R. 59-60; 64-67), news items (R. 68, 90), Biblical discourses (R. 69), interesting facts (R. 69), judicial proceedings, and matters touching upon labor, economics, social science, education, commerce, transportation, political science domestic and foreign, agriculture, science, invention, health, home, travel, religion, philosophy, and many others. *Consolation* No. 583, Volume XXIII, issue of Jan-

uary 21, 1942, the one mentioned in the indictment, listed the titles of the articles appearing in the issue of the magazine as follows: "ACTS OF THE THEOCRACY IN NEW ENGLAND, Roger Williams, Jehovah's witness.—THE FORGOTTEN GOD, The Penalty of the Nations for Forgetting.—JESUIT CUNNING UTILIZES COMMUNISM. —INSTINCT AND REASONING IN BIRDS." R. 69.

The Chief of Police of the Town of Columbia, Mr. Bill Owens, testified that he had received many complaints from the people in the town regarding the activity of appellant and Mrs. Babin. The leading business men and officials had advised him that the literature being distributed by appellant was against the government and tended to cause disloyalty among the people. (R. 41) On April 12, 1942, five days subsequent to appellant's arrival at Columbia, it was reported to Mr. Owens that a Bible study was to be held at the home of Annie Felix, a negro resident of the town, whereupon Mr. Owens went to investigate. R. 33, 46.

Upon his first arrival at the house, he found only Annie Felix at home, but when he came back a short time later, he saw appellant and Mrs. Babin in the house, and he walked into the room and demanded to know what they were doing there. Mrs. Babin handed him her "testimony card" which briefly explained the mission of Jehovah's witnesses. Beyond that it does not appear that either the appellant, Mrs. Babin, or Annie Felix made any remark to him during his visit. R. 79, 92.

The reason given for appellant's presence at Annie Felix's home on the day in question was that appellant and her companion had come to conduct a Bible study with the aid of the *Watchtower* magazine and the Bible. At the time the officer burst into the room, each had a Bible and was preparing for the study. R. 78, 90.

Mr. Owens appeared to be greatly incensed. He stated that he told Annie Felix that he was going to "get rid" of "that stuff" for her; that he "told her [Annie Felix] and

this woman a good bit there that afternoon"; and that he wasn't sure whether or not he had threatened Annie Felix that "she had better not be found there with any more of that stuff in her home". R. 40.

Mrs. Babin testified: "He told us that he didn't want us in Town and we would have to leave and that he spoke not only for himself but for the people of the City; and he said only over his dead body would we do this work here. He then grabbed the literature and the phonograph and the lecture and threw it out and broke it and set fire to it." (R. 76) Mrs. Babin went on: "It was a phonograph and a 14- or 15-piece lecture, which was 14 or 15 records of Bible Lectures, and he took the literature from the table of Annie Felix and carried it outside and burned it. He broke the phonograph and the 14 or 15 records." (R. 78) The appellant said: "He just marched in and begun to rave and he madly picked up everything within his reach that looked like literature and carried it outside and destroyed it. He didn't ask me anything and I didn't answer him anything." (R. 92) Mr. Owens stated that he saw many *Consolation* magazines at the home of Annie Felix, and he picked up all that he saw, burning same except for the issue of January 21, 1942 (No. 583), which he kept. R. 34.

It is not clear just how the magazine came to be in Annie Felix's house. Annie Felix testified that the above event took place in her home on Sunday and that on the previous Thursday Mrs. Babin in the company of appellant had called at her home and left several magazines with her, including the one here in question. (R. 47) The witness stated that Mrs. Babin was the one that had handed her these magazines. (R. 50) Yet upon direct examination for the defendant, Annie Felix said that appellant had never given her any literature of any kind and that Mrs. Babin had given her only one booklet which she identified as *Hope* and which was entered into the evidence as Defendant's Exhibit A-1. (R. 86) Moreover, Mr. W. T. Hornsby, another

of Jehovah's witnesses, stated that he had mailed several issues of the *Consolation* magazine to Annie Felix during the winter, but that he was not sure that the issue of January 21, 1942, was included in those he sent. (R. 73) Appellant and Mrs. Babin repeatedly denied having left any magazines or any other literature, with exception of the bookiet *Hope,* at the house of Annie Felix at any time. (R. 88, 77, 79, 85, 91, 101) The reason given was because Annie Felix "had all the literature" except the *Hope* booklet which Mrs. Babin says she left. R. 77.

Annie Felix identified the *Consolation* No. 583 which had been entered in the evidence as one of several Watchtower publications that were lying on the table in her house at the time of Officer Owens' visit on Sunday. (R. 49) She stated that she had read most of this particular issue of *Consolation* (R. 49) and that what she read did not make her feel less love for her country or for the flag, nor did it tend to make her "against the Government". Furthermore she agreed that nothing said or done by appellant caused her to "dislike the white people". (R. 47, 48, 51) Police Chief Owens also stated that at the request of the prosecuting attorney he had read this issue of the *Consolation* magazine and that when he finished he said he felt more respect for the flag than before, and that he was unable to point out any item other than the two referred to by the prosecuting attorney that was improper or wrong. R. 39, 44.

Both appellant and Mrs. Babin explained that since *Consolation* was a news magazine publishing many news items taken from the public press, they did not necessarily believe or teach everything that appeared in the magazine, but passed it on to the people for what it was worth. R. 84-85, 90.

The State introduced into the evidence two excerpts from *Consolation* No. 583, issue of January 21, 1942, which excerpts were mentioned in the indictment. The first of the allegedly objectionable writings is on pages 9 and 10 of the magazine, and appears in the record at pages 35-37 inclu-

sive. This article in its entirety is reprinted from an editorial appearing in the Lewiston (Maine) *Daily Sun*, and so states at the end of the article. R. 43.

The second article complained of in the indictment is on page 24 of the *Consolation* and appears in the record at page 37. The article is based on a news dispatch from Monte Carlo (Monaco), and contains seven lines of editorial comment besides the actual dispatch.

History of Proceedings and Federal Questions Raised Below

CIRCUIT COURT PROCEEDINGS

A motion for severance was first granted by the court, and the following proceedings therefore were had on the separate trial of Betty Benoit. R. 5-6.

Appellant filed and urged a motion to quash the indictment (R. 12-15), which was overruled and exception allowed. (R. 15) A demurrer to the indictment was duly filed and urged (R. 8-11), which was overruled and exception allowed. R. 11-12.

Appellant pleaded "not guilty". R. 32.

At close of the State's evidence appellant filed a motion for peremptory instruction requesting the trial court to exclude all the evidence and instructing the jury to return a verdict of "not guilty" (R. 16-18), which was overruled and exception allowed. At the close of the entire case and when both parties had rested their case appellant duly filed a motion for directed verdict requesting the court to exclude all the evidence and direct the jury to return a verdict of "not guilty" (R. 102), which was overruled and exception allowed. R. 102.

Under grounds 1 and 2 of the motion to quash (R. 12-13) the demurrer (R. 8), the motion for peremptory instruction (R. 16), and the motion for directed verdict (R. 102, 112-117), appellant attacked the statute on the grounds that

on its face, by its terms, and as construed and applied it abridged the rights of freedom of speech, press and of worship of Almighty God, contrary to the first and fourteenth amendments to the United States Constitution. R. 12-13, 8, 16, 102, 112-117.

Under grounds 4 and 5 of the motion to quash (R. 13-14), demurrer (R. 9), motion for peremptory instruction (R. 17), and motion for directed verdict (R. 102, 112-117), appellant attacked the statute as being unconstitutional because, on its face and as construed and applied, it was and is vague, indefinite, too general, a dragnet and permitted speculation, all of which violated section 1 of the Fourteenth Amendment to the United States Constitution. R. 9, 13-14, 17, 102, 112-117.

MISSISSIPPI SUPREME COURT PROCEEDINGS

In the Supreme Court of Mississippi under assignments of error numbers 1, 2, 3, and 4 the appellant complains respectively of the error of the trial court in overruling the motion to quash, the demurrer, the motion for peremptory instruction and the motion for directed verdict. (R. 111-112) Under grounds 9 and 10 of the assignments of error it is claimed specifically that the trial court should have held that the statute on its face and as construed and applied abridged the rights of freedom of speech, press and of worship, contrary to the 1st and 14th Amendments. (R. 115) Under ground 11 of the assignments of error it is claimed specifically that the trial court should have held that the statute was vague, indefinite and a dragnet in violation of the 14th Amendment. R. 115-116.

The Supreme Court of Mississippi considered each one of the assignments of error above described and numbered and overruled the same. The court in effect held that on its face and by its terms the statute did not abridge the rights of freedom of speech and press contrary to the federal constitution. The court in effect held that as con-

strued and applied that the rights of freedom of speech, and of press were not abridged contrary to the first and fourteenth amendment. The court in effect held that freedom of worship of Almighty God was not impaired by the conviction and judgment. R. 119.

Thereby the court of last resort in the State of Mississippi sustained the application of the statute to appellant and decided in favor of the validity of the same.

Specification of Errors to be Urged

(1) The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The Supreme Court of Mississippi erred in failing to hold that, as construed and applied to the particular facts and circumstances of the case, the statute in question is unconstitutional because, as so construed and applied, it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech, contrary to the First and Fourteenth Amendments to the United States Constituion.

(3) The Supreme Court of Mississippi erred in failing to hold that, on its face and as construed and applied, the statute violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Consti-

tution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellant of liberty without equal protection and due process of law.

(4) The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

(5) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

(6) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

(7) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the state's evidence.

(8) The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court

should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

ARGUMENT

ONE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

The appellant came to Columbia, Mississippi, for the sole purpose of there preaching the gospel of God's kingdom to the people. To do this she used the printed page, recorded phonograph discourses, and *verbal testimony.* The statement of facts herein serves to demonstrate how at the time complained of in the indictment, she was engaged in exercising this fundamental right in a most proper manner, viz., conducting a study of God's Word, the Bible, with one who had expressed her desire to have an understanding of the Great Creator's purposes. The terms of the statute form a *prima facie* burden on the right of free speech; and as construed and applied to the circumstances of this case by the courts below, it becomes manifest that appellant's right to speak freely within proper bounds has been infringed and denied by the statute.

This matter we have discussed fully under Point ONE of the brief filed in the case of *Taylor* v. *The State of Mississippi,* pages 23 to 77. For convenience of the court, that entire argument we incorporate herein by reference and make it a part of this brief just as though it were printed at length herein.

TWO

The statute is unconstitutional as construed and applied because it abridges appellant's right of freedom to worship Almighty God by preaching the gospel of God's Kingdom, contrary to the First and Fourteenth Amendments to the United States Constitution.

The most fundamental and delicate of all human rights is the freedom of the individual to worship God according to the dictates of his own conscience. As one of Jehovah's witnesses sent forth to tell the people of and concerning God's kingdom, appellant was serving her Creator in the way she considered proper and reasonable. She had come to the town of Columbia to bring the people the life-giving message of God's Word—which to her was the only proper way of worshiping her Creator "in spirit and in truth". When found in the home of Annie Felix at the time complained of, the appellant was engaged in this very pursuit.

As construed and applied to these circumstances by the highest court of Mississippi, her action was made a crime and she stood committed to the penitentiary. That this is a direct denial of the freedom of worship is almost too plain to require argument. We have presented a full discussion of this matter under Point TWO in the brief filed in the case of *Cummings* v. *The State of Mississippi*. For convenience of the court, that entire argument we incorporate herein by reference and make it a part of this brief just as though it were printed at length herein.

THREE

The statute is unconstitutional on its face and as construed and applied because it abridges appellant's right of freedom of the press contrary to the First and Fourteenth Amendments to the United States Constitution.

A

The broadest possible latitude in criticism and comment on world events, national affairs, state and national governments and public officials, was intended by the framers of the First Amendment to be guaranteed to the press, in times of war as well as in times of peace.

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Thirty-nine delegates from thirteen war-weary states listened to the reading of those solemn words and then affixed their signatures to the document.[1] To those delegates at the historic Convention of 1787 at Philadelphia these words were not merely an eloquent introduction to an important instrument of their creation. These words embodied the objectives, aspirations, and convictions earned by the blood and toil of a people who envisioned freedom and *determined* to have it. Fresh in their minds were the bitter experiences they and their fathers had endured under the spiked-heel of tyrants in the old European world. Deep wounds inflicted by the despotism of authoritarian government had not yet healed over, and, now that their battle cry of 'liberty' had become a reality, they resolved to insure the fruit of their efforts both to themselves *and to their poster-*

[1] *The Constitution of the United States of America* (Annotated), Senate Document No. 232, 74th Congress, Second Session, page 13.

ity by forming a government that would protect and respect these rights they deemed "inherent".

Their first attempt, the "Articles of Confederation", had proved to be weak and insufficient and they had therefore assembled themselves together in this convention to examine the defects in the existing system of their government and formulate "a plan for supplying such defects as may be discovered".[2] After much discussion and debate by some of the greatest figures in American history, they finally brought forth to a skeptical world the completed proposed "Constitution". When the Continental Congress passed a resolution on September 13, 1788, putting the Constitution into operation[3] far-sighted statesmen realized that a milestone had been passed in the field of government. This new theory introduced a new sovereign in the realm of human authority: The PEOPLE became the fountain of all law and the government became their servant. The relative achievement of this "experiment" under the pressure of modern circumstances speaks for itself.

But the people, aware of their stated sovereignty, were not yet satisfied with arrangements. What positive assurance and protection did they have against usurpation of their newly declared freedom? What was there in this document that guaranteed to them their right to worship God according to the dictates of their individual conscience? Was there anything in this law that prohibited an overly ambitious Congress from abridging their right freely to speak, write and assemble? How could the people be sure that Congress would not resort to the oppressive tactics of the tyrant just overthrown and quarter soldiers in their homes against their consent—search their houses and take their persons without warrant? Was it true that at the whim of Congress a citizen might be thrown into jail without charge—held under excessive bail—forced to testify against

[2] *Text in Documents Illustrative of the Formation of the Union*, pp. 39-43.

[3] *The Constitution of the United States of America, op. cit.*, p. 13.

himself—face trial without counsel or the right to call witnesses or face his accusers? Did this new constitution surrender the erstwhile sovereignty of their state government to the new federal system? And finally, where in the constitution was it clearly and definitely stated that THE PEOPLE were to be the sovereign authority and the government to act only with delegated power?

Knowledge gained by bitter experience had taught these people to be cautious and suspicious. To them the rights of the individual citizen—the liberty of man—were the things they had been fighting and campaigning for. With the same spirit in which they had fought for liberty at Valley Forge, the people demanded that the constitution be done away with entirely or that a "bill of human rights" be added.[4]

As a result of their demands, Congress on September 25, 1789, finally proposed twelve amendments to the Constitution, and on December 15, 1791, the last State ratified ten of these amendments, and thus the *Bill of Rights*—the Bill of fundamental inherent human rights—became the law of the land with which all Americans today are familiar. With these provisions added, the constitution became more than a framework of a political system. It became the memorial perpetually dedicated to the protection and defense of freedom of Americans!

As the stars in the flag gradually increased to 48, only a very few amendments were found necessary to be added to the Constitution. It is here appropriate to mention only the Fourteenth Amendment which was adopted July 9, 1868, to secure the PEOPLE against abridgment of these same rights under state legislation.

[4] "On February 6, 1788, Massachusetts, by a narrow margin of 19 votes in a convention with a membership of 355, endorsed the new Constitution, but recommended that a bill of rights be added to protect the States from Federal encroachment on individual liberties. . . . New Hampshire became the ninth State to ratify, but like Massachusetts, she suggested a bill of rights. . . . New York ratified, with a recommendation that a bill of rights be appended."—*The Constitution of the United States of America, op. cit.*, p. 14.

We know that the court is well aware of these facts and we recite them merely for the purpose of calling attention to the great moment of the question presented in this case. We submit that the institution known as Democracy is here at stake. We believe that a turning point in the history of our nation has been reached where the court must test the wisdom of the system of government envisioned by the founding fathers, against the greatest emergency ever faced by humanity.

The question to be determined by this court is the extent to which the broadened police power of the executive branch of government, acting under the necessities of total war, can be extended in derogation of the constitutional liberties of the individual. We do not say that an unalterable line of demarcation must be drawn between these factors, but we here submit that the application and construction of the statute has placed its operation in the forbidden area of "inalienable rights of man".

At this point we consider the application of the statute as it, as we contend, infringes the right of free press under the circumstances of this case. The arguments advanced under Points ONE and TWO in the briefs filed in the cases of *Taylor* v. *The State* and *Cummings* v. *The State* covering the treatment of freedom of speech and freedom of worship, are inseparably related to this discussion, and by specific reference we here incorporate under this point the particular arguments and principles therein advanced.

At the outset let it be recognized that the press of the nation is an item of the deepest national significance deserving the closest and most careful consideration that can be judicially given to a matter so fundamental to the national scheme.

Today it is a matter of common knowledge that the press is flourishing as never before in history. Recognizing the importance of feeding the press with important governmental news and information, Congress has authorized the establishment of the Office of War Information under the

Executive Office of the President. Special sections are reserved to the press in the galleries of Congress and all legislative assemblies nation-wide. Even this court has made special provision for the press that they may have easy and accurate access to the proceedings of this tribunal.

As a result of the gigantic network developed by the press, everyone in the entire nation is informed hour by hour of the events of the day. The nation is "on its toes", so to speak, ready for drastic changes and moves necessary under the stress of the times. If this were not so, distrust, fear and suspicion might instead prevail in the present circumstances.

The record conclusively shows that the publication here in question was in the nature of a news magazine, a part of the vast labyrinth of the press-communication. The specific articles challenged deal with current matters that are today featured, as they were at the time of the publication of the article, in the press of the nation. Since the state court has sustained the finding of the jury that the publication came within the prohibitory terms of the statute, we shall not, nor can we, do more than assail the validity of the statute itself as so construed and applied, under provisions of the First Amendment to the United States Constitution. The proposition is fundamental that the freedom of press guaranteed to be secure under the First Amendment against abridgment by the United States, is similarly secured to all persons by the Fourteenth against abridgment by a state.[5]

To do this, we must first determine what Congress intended when the First Amendment was passed. The historic background of the circumstances surrounding the adoption of the Bill of Rights is given in an enlightening article appearing in Thomas M. Cooley's *General Principles of Constitutional Law*, Third edition, 1898, pp. 299-301:

[5] *Schneider* v. *State*, 308 U. S. 147; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Whitney* v. *California*, 274 U. S. 357.

"Light may be thrown upon the intent by a consideration of the purposes which the enjoyment of the right subserves. The press is a public convenience which gathers up the intelligence of the day to lay before its readers, notifies coming events, gives warning against disasters, and in various ways contributes to the happiness, comfort, safety and protection of the people. But in a constitutional point of view, its chief importance is, that it enables the citizen to bring any person in authority, any public corporation or agency, or even the government in all its departments to the bar of public opinion, and to compel him or them to submit to an examination and criticism of conduct, measures, and purposes in the face of the world, with a view to the correction or prevention of evils; and also subject those who seek public positions to a like scrutiny for a like purpose. These advantages had been fully realized and enjoyed by the people during the revolutionary epoch; the press had been the chief means of disseminating free principles among the people, and in preparing the country to resist oppression: and its powers for good in this direction had appeared so great as to cast its other benefits into the shade. It is a just conclusion, therefore, that this freedom of public discussion was meant to be fully preserved; and that the prohibition of laws impairing it was aimed, not merely at a censorship of the press, but more particularly at any restrictive laws or administration of law, whereby such free and general discussion of public interests and affairs as had become customary in America should be so abridged as to deprive it of its advantages as an aid to the people in exercising intelligently their privileges as citizens, and in protecting their liberties."

This court has adopted substantially the same view as above announced. In *Bridges* v. *California*, 314 U. S. 252, 265-266, this court said:

"No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed. . . . And since the same unequivocal language is used with respect to freedom of the press, it signifies a similar enlargement of that concept as well. Ratified as it was while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society.

"The implications of subsequent American history confirm such a construction of the First Amendment. . . ."

Without citing further authority, it is seen that the free press was designed to play a specific role in the new democracy. It was provided as the means whereby the people could be kept informed on matters of government they had assumed to control. Thus they could keep a watchful eye on the representatives they had elected to public office, and intelligently exercise their right of voting such officials in or out of office.

Even a cursory examination of the matter reveals the importance assigned to the public press. Without a free press, *the people,* the sovereign authority in America, would grope about as helpless victims of propaganda, blindly following whatever power controlled the press, be it proper or improper power. A country thus led along in darkness, its eyes blindfolded by a black cloth of censorship, becomes the easy prey of tyrants. Other than by a free press how

can the people direct their Congress as to their wishes? Without free press we submit that DEMOCRACY cannot exist!

A distinction must at once be drawn between a *controlled press* and a *free press*. To be sure, the blighted peoples of Europe in the Nazi-Fascist-dominated lands have newspapers, magazines and other propaganda aplenty, and are encouraged to read the same. But every line of type that is produced for public consumption must first pass the eye of the Nazi censor, and unless it affirmatively expounds the Nazi creed, such publication is immediately suppressed, no doubt on the ground that it is "seditious". Can it be any wonder then that such people now groan and suffer under the heels of the Axis regime—servants and slaves to the unrelenting whip hand of the dictator? For the very reason that Americans have always enjoyed a *free* press as distinguished from a *controlled* press they are now able to shudder at the thought of such oppression dominating their lives. And in this hour of crisis in American history, its citizens can be glad that the founders of their country provided and protected a way for them to enjoy the institution of a free press. Had those founding fathers neglected to add the Bill of Rights to the Constitution, indeed the entire complexion of the present conflict might be different.

In *Stromberg* v. *California*, 283 U. S. 359, 369 (1931), which held invalid a California statute penalizing the display of a "red flag as a sign of opposition to organized government", the newly appointed Chief Justice held:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, *is a fundamental principle of our constitutional system.*"

And in *Near* v. *Minnesota*, 283 U. S. 697, 719-720 (1931), this court, in upsetting a State newspaper ban, squarely

rested its decision upon the public interest in free public discussion, saying:

> "While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities."

This brings the discussion down to the heart of the matter. What role does a free press play in the conduct of the war? Is it subject to regulation of the legislature's enlarged police powers beyond reach of judicial interference? Or on the other hand, is it possible that a *free* press can exist right on through the emergency of war, enjoying the exercise of its normal peace-time privileges?

We submit that without a free press the war effort is crippled to the point of its complete collapse. We have just seen that the entire structure of government is based on the presumption of an informed intelligent citizenry, capable of discharging its duty as a sovereign power. Beyond refutation, the free press has been largely instrumental in bringing the country to its present position of power. The theory of the government has not been changed from that ordained by the framers of the Constitution. Now to knock from under the system one of the principal supporting

pillars is inviting the collapse of the entire structure.

It must be kept in mind that the Bill of Rights was adopted at a time in history when the country was still in a war state. By mustering all their strength and pushing with the might inspired by justice, they had just emerged from what may be truly termed an "all-out" war. It was on the basis of what they had learned in time of war that led them to adopt the form of government now enjoyed. Therefore, the First Amendment itself can be fairly termed as "war legislation" adopted at a time when the minds of the statesmen took into consideration the exigencies and necessities of war. Thus there is little strength to the argument that liberty of the press must be entirely subordinated to the will of the government in time of war. We submit that during a time of stress it becomes more necessary than ever before for the press to guide the people to the TRUTH of matters, that they may intelligently wield the fist of armed might against their enemy.

But how may the press convey the TRUTH to the people? Thomas Jefferson, often referred to as the "Father of Democracy", caused to be enacted into the statutes of Virginia one of the most noble laws ever written, and therein the answer is given:

> " . . . that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere, when principles break out into overt acts against peace and good order; and finally, that *truth is great and will prevail, if left to herself; that she is the proper and*

sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them." [Italics added]—Virginia Statute for Religious Freedom.

What is there said of religious freedom applies with equal force to freedom of the press, if an arbitrary censor, whether judicial, administrative, or legislative, is given the power to suppress and control the press without respect to what have always been recognized as the rules of police power balanced against the constitutionally protected rights.

In *Schneider* v. *State*, 308 U. S. 147, it was said:

> "This court has characterized the freedom of speech and the press as fundamental personal rights and liberties. . . . The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the right lies at the *foundation of free government by free men.* It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

Thus we do not assert that the right of freedom of press is an "absolute" right free from interference from the proper exercise of the police power of the state,[6] but we do contend that this statute as construed and applied transgresses rights constitutionally protected beyond the scope of the power of the states under the Tenth Amendment.[7]

[6] *Cantwell* v. *Connecticut*, 310 U. S. 296, 304, 310; *Schneider* v. *State*, 308 U. S. 147, 165; *Hague* v. *C. I. O.*, 307 U. S. 496, 515-16; *De Jonge* v. *Oregon*, 299 U. S. 353, 364.

[7] *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Schneider* v. *State*, 308 U. S. 147, 160; *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Thornhill* v. *Alabama*, 310 U. S. 88, 97, 98; *Herndon* v. *Lowry*, 301 U. S. 242, 264; *De Jonge* v. *Oregon*, 299 U. S. 353, 363; *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245, 246.

Mindful of the truly fundamental nature of the freedom of the press in modern democracy, it is now proper to consider more specifically the nature of the challenged publication and the competing need of the state's police power.

B

The publications in question related to a matter of fair comment on present-day world events and course of action taken against Jehovah's witnesses in which the public had an interest.

The indictment specifically singles out two articles appearing in the *Consolation* magazine, issue of January 21, 1942, as being objectionable and unlawful under the statute. The highest court of the state has affirmed this construction of the law, and therefore our consideration is narrowed to a determination of the validity of this law as applied under the Federal Constitution.

The first of these articles is a reprint of an editorial which had appeared in the Lewiston (Maine) *Daily Sun*, an independent newspaper having no connection with the *Consolation* magazine. The editorial speaks for itself and it is therefore sufficient to say that it was one of many editorial comments [8] appearing in the public press concerning this court's decision in the case of *Minersville District* v. *Gobitis*, 310 U. S. 586, more commonly known as the "Flag Salute Case". The editor expressed his disagreement with the court's holding and then proceeded to outline his reasons why he thought the ruling "tyranny",[8] and his proposal for remedying the matter. This entire article was reprinted in *Consolation* without one word of editorial comment.

The article next complained of appeared in the same issue of *Consolation* and was based on a "Monte Carlo dispatch", relating that the system of compulsory flag saluting had originated in the "Catholic schools of France". The

[8] See *West Va St. B'd*, etc. v. *Barnette*, No. 591 Oct. T. 1942 in this Court, appellees' brief, pages 74-80; also, as to "tyranny", cf. Opinion by Judge Parker, Record p. 54, same case.

editor of *Consolation* then observed in seven lines of comment that such news confirmed the claim that the Catholic Hierarchy was covertly pushing that system in America.

The jury has conclusively determined that these utterances are within the pale of the statute, and that appellant distributed same. Therefore on this appeal our attack is directly on the statute itself as so interpreted.

To do this we must first discuss in some measure the limits which this court has set down as governing the privilege of the press to render "fair comment" on matters of public interest. The generous boundary in the civil libel cases given to the press under their privileged right of "fair comment" is well established and familiar to all. But this court has been even more generous in defining limits to which the press may go in its right to comment on matters of public concern. In *Cantwell* v. *Connecticut*, 310 U. S. 296, 310, Mr. Justice Roberts said:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

The challenged article here primarily deals with this court's ruling in the *Gobitis* flag-salute case. This criticism of the ruling *did not speak any untruth* and neither did it resort to vilification of any man or group of men. It merely gave *constructive criticism* of this widely discussed ruling. Mr. Justice Frankfurter, in *United States* v. *Morgan*, 313

U. S. 409, 421 (upholding a complaint made by Vice President Wallace against this Court when he was the Secretary of Agriculture), said:

> "In publicly criticizing this court's opinion the Secretary merely indulged in a practice familiar in the long history of Anglo-American litigation, whereby unsuccessful litigants and lawyers give vent to their disappointment in tavern or press."

In that case the Secretary had "vigorously criticized the decision." Not long ago the President of the United States very strongly attacked this Court and relegated it to the 'days of the horse and buggy' and made many harsh statements against the Court. It was the President's legal right to do this as an American citizen. We submit that the *Consolation* magazine has the same right. If the time has come when the lower courts inaugurate the rule that the decisions of the Supreme Court of the United States cannot be criticized by the public press and the citizenry, then it is high time that this court *publicly* give assurance that such utterances are not "sedition", but the discharge of an inherent and fundamental *duty* of the public press. This is especially true where the criticism made is in the nature of *constructive* criticism such as here involved. When the editors of the many papers of the nation feel that an encroachment has been made upon the most fundamental rights of the people either by the legislature, executive office, or judiciary, it is the DUTY of such editors to call these matters to the attention of the people, even though they may personally feel (as many do) at odds with the one whose right is infringed. The reason for this is obvious. In the spirit of democracy, and in the name of freedom, these men put their personal judgment and prejudices in the background, and publicly campaign for the defense of the liberty so assailed. The serious error made by the court below is that it has confused this *duty* with the entirely unrelated matter of *sedition*.

The difference between these two matters is as great as that respecting the poles of the earth. The one contemplates the overthrow and destruction of the government, or, as aptly stated and defined by the statute in question: "... matter designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi ..." As complete antithesis, the other contemplates invigorating, strengthening, and forwarding the cause of the government and the Constitution.

This reveals the mean characteristic of the statute. It leaves to the discretion and judgment of a jury whether a publication falls in one class or the other without giving them any guide or rule of determination or even any semblance of a suggestion as to what the terms loyalty and disloyalty mean. Thus to put into the hands of a jury a penal statute with the penalty carried by this law, is the same as putting a machine gun in the hands of a child. This case itself furnishes a striking example of what might happen were it allowed to stand. To be an editor of a newspaper would be a hazardous occupation indeed, for if a particular utterance could be made to appear objectionable to a jury, the one responsible therefor, *including the newsboy who delivered same*, would be liable to penal servitude for ten years! The result would be the complete demoralization and demolition of the press, and the attendant rapid degeneration of the democracy of which it is an integral part.

The publication in question speaks for itself. It is quite apparent that if this law be sustained in its application to this type of publication, then it becomes impossible for any minority to publish any sort of an article in support of their views. Furthermore, a citizen disinterested in the controversy, or any neutral party, would be prohibited under penalty of law, to publish anything in defense or in favor of a minority view. Further extended, there is nothing in the statute that would prevent private correspondence of such persons, if such fell into the hands of the

prosecuting officials, to be made the basis of an action similar to that here involved. In short, if sustained, this statute will literally destroy all communications of minority groups, and thus reduce this democracy to the tyranny of the lands run by the Nazi-Fascist combine.

It would seem that these matters are so obvious that discussion of them is hardly merited. Yet in the words of Justice Alexander, dissenting in the case of *Taylor* v. *State*, in the court below:

> "My views have been elaborated almost to the measure of dissertation. Yet we have been confronted with an occasion where an assumption that these principles were known and read of all men would seem to have been unwarranted." R. 171.

C

The publications in question contained only statements made by Jehovah's witnesses as an official explanation of their attitude toward the national flag and governments of this world in defense of the charges made against them and misunderstandings resulting from false reports concerning their loyalty.

It becomes important to give some consideration to the purpose and aim of the *Consolation* magazine so that we may see that it is a periodical devoted to matters entirely opposed to and distinguished from those dedicated to the overthrow of the government. It at once becomes clear, upon considering the contents of the single issue of the magazine introduced in evidence, that the purpose of *Consolation* is to keep the public eye on the Kingdom of ALMIGHTY GOD. That this is a purpose entirely proper and laudable, must be conceded. It also prints articles of public interest either constructively criticizing or commending matters affecting the public. The evidence does not show,

nor can an inference be drawn from the exhibit itself, that there is one syllable in the magazine that advocates anything detrimental to the health, welfare, morals or *government* of the American people.

The appellee points an accusing finger at the publication on the ground that it advocates that persons should not salute the flag, which tends to cause "a stubborn refusal" of its readers to render the salute to the national ensign. The courts below have confirmed the accusation. Even if we conceded that this conclusion were justified under the facts (and we have strained our imagination on this point in vain), nevertheless it will be found that no law exists, either in Mississippi or in the Federal Statutes, which makes it mandatory for a civilian to render a salute to the flag, and furthermore it cannot be assumed that a refusal to salute the flag for conscience' sake is "disloyalty". Therefore the statute itself is based on a fallacious assumption. The question of the compulsory salute to the flag has been a widely discussed question in every state in the Union, and is therefore one of national interest to the American people, and to the people of Mississippi. If the flag salute is a matter of importance sufficient to warrant its adoption into the statute law of the state, then surely it is worthy of discussion in the public press, that *the people*, who are responsible for the passage of all law, may know and be informed on the subject.

The Bible, the Word of Almighty God, clearly states at Exodus 20:2-6:

> "I am the Lord thy God, which have brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visit-

> ing the iniquity of the fathers upon the children unto the third and fourth generations of them that hate me; and shewing mercy unto thousands of them that love me, and keep my commandments."

Those words are the TRUTH, and the people of Mississippi have a right to have free access thereto. If the courts rule on a matter so directly affecting the people personally, it must be admitted that the people have a right to read an editorial concerning that decision. Since when have the words of ALMIGHTY GOD become sedition? Since when has fair and honest criticism of the ruling of the Supreme Court become detrimental to the safety of the nation at war?

We well recognize that there are certain matters of truth and fact which cannot be published. These matters deal with the confidential matters of the government, particularly with reference to the armed forces. There are other matters which by their very nature must be kept confidential. But such matters are not involved in this case. The question of the legality and propriety of the flag salute is anything but a confidential matter; on the contrary, as far as Jehovah's witnesses are concerned it is notorious. Its public discussion could by no capricious play of fancy endanger the welfare of the nation, but to the contrary it seems wholly manifest that only by public discussion can the matter be settled.

We submit that the bloody record of persecution of Jehovah's witnesses during the last three years in this country is due to a lack of understanding on the part of the public as to the real attitude of Jehovah's witnesses. If a way has now been found to silence open discussion of the matter in the press, can it ever be hoped that an understanding will be reached? The appellant herein allegedly distributed this publication containing the article pertaining to the flag to a person that might not otherwise ever have any other means of knowing about the issue. That person testified, as did the officer who made the arrest, that after

reading the magazine she had more respect and love for the country and flag than before. Yet *for this act, the appellant* stands committed to a ten-year penitentiary sentence. A more flagrant travesty upon the principles of free press can hardly be imagined.

By informing the people of Mississippi, who during the past three years have spattered the pages of their history with the blood of their fellow citizens, Jehovah's witnesses, appellant was performing a public service of merit, that if left unfettered would eventually result in the healing of an ugly wound. *Consolation* did not advocate, nor does it now advocate, that any person refrain from saluting the flag. What it does attempt to do is clarify the position of Jehovah's witnesses on this subject, so as to clear up misunderstanding, remove hate, and destroy unreasoning prejudice. In all candor, this is a proper and lawful purpose.

D

There is no evidence that the writings complained of constitute a clear and present danger that any of the things aimed against by the statute will result.

Mr. Justice Holmes, in the case of *Schenck* v. *United States,* 249 U. S. 47, 52, laid down the principle thus:

> "The question in every case is whether words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress [or the Mississippi legislature] has the right to prevent." [Bracketed words added]

Having determined the nature of *Consolation* magazine, and the circumstances under which it was being distributed, it must next be considered whether or not this action combined with the statements appearing in the magazine con-

stitute a clear and present danger to the interests which the state is empowered by the people to protect.

Under Point One, subheads D, E, and G, in the brief filed in *Taylor* v. *The State*, pages 42 to 46, 46 to 59, and 59 to 62, respectively, we have exhaustively reviewed this subject, and discussed the line of "sedition cases". What is there said may appropriately be considered at this point, and we make specific reference to that discussion, and thereby eliminate needless repetition.

Upon a consideration of the precedents laid down in the above-mentioned cases it becomes clear that no such "clear and present danger" exists under the facts of this case, and hence as the statute applies to the appellant in throttling her liberty to freely exercise her right of press within proper bounds, such law becomes invalid and unconstitutional.

E

The distributor of the literature and the publisher are equally protected against application of the statute to their activity because distribution as well as publication or printing is protected.

Chief Justice Hughes in his opinion in *Lovell* v. *Griffin*, 303 U. S. 444, quoted with approval the case of *Ex parte Jackson*, 96 U. S. 727, 733:

> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value'."

No one would have the pluck to contend that a state might pass a statute under their police powers previously restraining the publisher from printing certain literature which it deems objectionable. Such power of *censorship*, exercised PRIOR to publication is not included in the Amen-

can jurisprudence. The Supreme Court has extended this principle to extend to that same publication AFTER it is printed. Thus the protection of the First Amendment is made to extend a protecting hand over the *institution* of the press. From the time the thoughts flow from the pen of the author to the point where the fruit of the press reaches the hand of the reader, the protection of the privilege of free expression and free action in distributing same is allowed to proceed unhampered by legislative restraint.

In this case it is not contended that appellant violated any law in the *manner* in which she distributed the literature, but the law is alleged to have been violated by the act of distribution itself. This is a frontal assault on the guarantee of the First Amendment! If the publisher of the literature in question was limited to the State of Mississippi for distribution of its publications, it would be found that this statute would be just as effective as an interdiction in the nature of prior censorship of publication, as it is in the role of a strangling noose on the right of distribution. As this court has previously recognized, the act of publication and circulation are inseparably joined.

What the appellant was doing at the time of her alleged transgression of the law, was distributing the "fruit of the press". We submit that this activity is equally and inseparably protected with the activity of publication, and cite as authority for the proposition *Lovell* v. *Griffin*, supra; *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147, and *Cantwell* v. *Connecticut*, 310 U. S. 296.

F

As construed and applied, the statute absolutely prohibits exercise of the right of freedom of the press previously condemned by this court.

Looking at the matter in a more practical light, the pernicious effect of its doctrine becomes apparent. Here is no *regulatory* measure, enacted in the interests of the

health or safety of the people. The opinion of the majority in the court below makes it clear that publications of this type are absolutely *prohibited. It is true that the statute* has been applied to only one publication of many hundreds in the State of Mississippi. However, if sustained in this application, the same doctrine can be arbitrarily applied to any or all of the other publications in the state, for such period of time as the war lasts.

The protective shield thus pierced by the spearhead of misguided patriotic zealotry, the cherished right is thrown down at the mercy of the legislature and blinded juries, raped and ravished and left as dead—the victim of the global war. Election publications in the form of leaflets, magazines, books, newspapers, and other familiar mediums might be stifled with impunity and their promoters jailed as enemies of the state. Any person apprehended with a copy of the Bible who has dared to make mention of the requirements of God's law to another, may be publicly discountenanced as a rogue and sentenced to prison. Parents, attempting to instill in their children a respect and reverence for their Creator and a love of the flag and their country, might have a difficult task indeed if the child saw its parent dragged off to court as a public enemy for no offense other than having given his offspring a book containing the first two of the ten commandments.

These suggestions seem fantastic and improbable of occurrence, yet it is a fact that appellant here has been convicted by the highest court of Mississippi of merely having been present in the home of a negro woman who happened to have lying on her table a copy of the *Consolation* magazine, at the time an officer of the law burst into the room. For this "offense" appellant has been sentenced to the penitentiary for a term of ten years or the duration of the war. If appellant had come to the house of the negro woman as a murderess, and shot the woman down in cold blood, she probably would have received a much lighter sentence under Mississippi law.

What discordant reasoning could give birth to such gross inequity? The answer may be found in the pages of history identified as the unreasoning mace of intolerance. Blinded by malice and shackled by hate, men often sacrifice their goods, their hope and life itself in an attempt to stifle by force those who voice dissent to their view. This passion had been thought discarded from the philosophy of political science and government when the last of the medieval inquisitors went down as a victim of his own machinations. But this statute is a subtle attempt to assert the centuries-old evil design of the intolerant into the modern American government, which was created, planned and put into operation by a people determined to shut out this very thing.

Let it not be overlooked that in providing for a complete and obviously arbitrary prohibition, Intolerance has been handed a powerful whip with which she can lash out and strike down those seeking shelter beneath the arm of Liberty. This court has previously announced its unwillingness thus to forsake the cause of freedom and, in an unbroken line of cases, as the record stands now, effectively turned aside those who, advancing sundry excuses, sought to avoid the constitutional limitation upon their desires to infringe the liberty of those they despise. *Lovell* v. *Griffin*, supra; *Hague* v. *C. I. O.*, supra; *Schneider* v. *State*, supra; and *Cantwell* v. *Connecticut*, supra.

G

The cases involving publications show that the rule applied by this court does not allow abridgment of the right of freedom of the press in the circumstances shown in this case.

We have given careful examination and consideration to the sedition cases that have come before this court. None of those cases can be fairly said to be "on all fours" with this case, but the principles they lay down, and the limits defined thereby do make it plain that the publications here

in question are well within the limit defined as proper and lawful. To cite those cases here would be needless repetition, and we therefore make specific reference to such cases that appear under point ONE, subdivision G, of the brief filed in *Taylor* v. *State*, pages 59 to 62.

FOUR

The statute is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, permits speculation and amounts to a dragnet in the manner construed by the Supreme Court of Mississippi so as to violate the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

The facts of this case furnish a classic example of the results of a vague statute. The evils at once are apparent, especially in a field so delicate as the one entered upon. We feel that one of the major inequities of this case grows out of abuse of the latitude granted by the statute. We have also considered this matter under point FOUR of the brief filed in *Taylor* v. *State*, pages 80 to 87, and by specific reference incorporate that entire discussion herein the same as if it were printed at length at this point.

Conclusion

At this moment humanity is caught in the pangs of the greatest political upheaval in its entire history. The clamor of the war machine, the heat of battle and the swiftly changing international scene has excited many to the point of losing sight of what is taking place, and thus blinded, they become hopelessly enmeshed in the tangle of conflicting impulses. But as in centuries past, the thing that has now become almost a reality has steadily pushed forward

through its various stages of development. Beginning with clans and tribes, the worldly government of man has progressively advanced in successive steps through the feudal age to the domain of the small kingdoms; from the small kingdoms to the many nations; from the many nations to fewer nations; fewer nations to the present division into the two opposing world powers; and tomorrow—the dream of the philosopher—a world state.

This progression has been directly in ratio to the advancement of science in communication and transportation, which has now reduced the barriers between members of the human family to insignificance. Thrown into proximity with one another this final upheaval has occurred.

Without embarking upon a dissertation of political science, it is sufficient for the purposes of this brief to note that communication, the bulk of which has been written and printed, has been the guiding measure of man's progress. If the founding fathers considered printing important, and the liberty of the press essential, then by force of reason we find that it is infinitely more important in the modern world. The nations are now deadlocked in a struggle the outcome of which must be the survival of the fittest. If this country expects to assume leadership in the world, it must now key its program with an eye to the future.

The President of the United States has pledged the nation to the establishment of the four freedoms in the earth, thereby indicating the determination of the American people to preserve the American way of life and to extend its privileges to all peoples of the world. This is a task of immense proportion, and the question is now a timely one: What part will the *press* play in this matter?

We submit that the press is the principal means whereby the peoples may now be enlightened to keep pace with the things which lie ahead. Democracy has for its main pillar of support an enlightened populace—a capable human sovereign. But if the populace must depend on the press to keep them informed the press must be healthy,

vigorous, unfettered and unbound; free to campaign for reform, enlighten the mind of man, call to task negligence in public officials, and perform the many complex duties which the founding fathers realized to be fundamental to democracy.

Not the federal or state governments, but "We the people of the United States of America" are the *sovereign power!* The government, as such (whether federal or state), is a mere agency of the *sovereign*—"the people of the United States". The *sovereign's* agent cannot fetter the principal—"the people of the United States"! The agent cannot rightly restrain the exercise by the *sovereign* of "his" fundamental inherent rights. The agent's authority springs from and is restricted by the sovereign's code—THE CONSTITUTION. (*McCulloch* v. *Maryland*, 4 Wheat. 316) The sovereign people cannot exercise their kingly prerogative if they are kept in ignorance through legislative embezzlement by the "agent" (under guise of national emergency) of the means by which they are enlightened—freedom of the press. It is conceded that free press is Democracy's essential supporting pillar. When cut away, this form of government falls with it.

So fundamental did the statesmen who planned and ordered this democracy consider the freedom of the press that some of them stated, as in the New Hampshire Constitution, Section 22:

> "The liberty of the press is essential to the security of freedom in a state. It ought, therefore, to be inviolably preserved."

Today, when enemies of freedom have declared an all-out assault on these liberties, the nation must necessarily guard with jealous pride the secret of her power and strength—the enlightened sovereign people. Instead of short-sightedly imposing burdens upon this fundamental of democracy, as is attempted by the Mississippi Legislature

every encouragement should now be given the press to further strengthen the sovereign. To be sure, there may be abuses, but when these take on the form of unlawful action, proper criminal statutes may promptly deal out justice. But the over-all fruitage will show an increase in 'enlightened opinion and right conduct on the part of the citizens of this democracy.' *Cantwell* v. *Connecticut*, supra.

Jehovah's witnesses, though plain and insignificant people of earth, are all keenly aware of the situation that now exists. This has been made possible by the grace of God and the diligent use of the Bible and millions of printed books. They realize that this is the very time marked in the Word of God as being the season for establishment of the kingdom of God ruled over by Christ Jesus, which government will bring to man here on earth the blessings of security and happiness universally desired by the hearts of honest men and prayed for in words given by Jesus: 'Thy kingdom come on earth.' (Matthew 6:9-13) The appearance of man's "new world order" is to them a sign certain of the approach of the time for Jehovah's battle at Armageddon, when man will no longer exercise sovereign dominion, but Jehovah's duly constituted "King of kings, and Lord of lords" will shoulder that. (Isaiah 9:6, 7; Daniel 7:13, 14) The Most High has now commissioned His faithful ones on earth to give this message to all peoples in all nations of earth, and each one of such witnesses to Jehovah's purposes will carry out this divine commission regardless of consequence or circumstance.

Not only do Jehovah's witnesses have the constitutional right thus to bring this message to the people, but the people desiring this information likewise have a right to *receive* the message and thus put themselves in line for life everlasting.

Obviously neither the court nor the legislature, nor the executive, has the power to decide for the people the verity of this message. Intrinsically this is a matter that must be

submitted to the individual conscience of the people. However, these departments do have the responsibility as servants of the people to keep open the avenues of communication that the sovereign people themselves have dedicated and ordained for this purpose. The moment that such departments of government fall short of their duty, that moment marks the end of the distinguishing feature of *democratic* government.

Like a temple supported by sturdy columns, democracy has proved its merit through a changing period of human history, and, now imperiled by the assault of the enemies of freedom, it stands capable, ready and willing to defend itself. But now it is asserted that under the stress of the time the freedom guaranteed to the individual must give way to *the power of the state.* In the light of history, the nature of democracy, and the present situation, this is at once recognized to be a pernicious fallacy, which, if adopted would pull out from under the democratic structure an essential supporting column, leaving the entire building to collapse into the ruins of a medieval autocracy. Without a free press, we submit that a democracy cannot exist. Without it the other freedoms are unable and inadequate to support the type of institution the forefathers contemplated. Therefore, in the name of the democracy which Americans love, we petition this court to reverse the holding of the Supreme Court of Mississippi and discharge appellant, awarding costs.

Respectfully and confidently,

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